

DCI Yeah Support

1 May 1984

MEMORANDUM FOR: Director of Central Intelligence

FROM: Eloise R. Page
Acting Director, Intelligence Community Staff

SUBJECT: Legislation on Unauthorized Disclosures

1. As a follow-up to our discussion this morning, attached is the proposed legislation to criminalize the unauthorized disclosure of classified intelligence by a cleared individual.

2. As we discussed, an effort to have the leadership of the SSCI and, possibly, the HPSCI sponsor the legislation would be useful in gathering broad support. The support of the Secretary of Defense and the Attorney General should be sought also. The bill clearly is directed at requiring government officials to live up to their responsibility to safeguard classified information. It does not infringe upon rights of the news media in any way.

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Eloise R. Page

Attachment:
Proposed Legislation

A BILL

To protect against injury to the national defense and foreign relations of the United States by prohibiting certain unauthorized disclosures of classified information.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That
Chapter 37 of title 18, United States Code, is amended by adding at the beginning thereof the following new section:

"§ 791. Unauthorized Disclosures

- (a) Whoever, being an officer or employee of the United States or a person with authorized access to classified information, willfully discloses, or attempts to disclose, any classified information to a person who is not an officer or employee of the United States and who does not have authorized access to it, shall be fined not more than \$10,000, or imprisoned not more than three years, or both.
- (b) Whoever, being an officer or employee of the United States, willfully discloses any classified information to an officer or employee of the United States with the intent that such officer or employee disclose the information, directly or indirectly, to a person who is not an officer or employee of the United States and who does not have authorized access to it, shall be fined not more than \$10,000, or imprisoned not more than three years, or both.
- (c) As used in this section--
 - (i) the term "classified information" means information or material designated and clearly marked or represented, pursuant to the provisions of a statute or Executive order, as requiring protection against unauthorized disclosure for reasons of national security;
 - (ii) the term "disclose" or "discloses" means to communicate, furnish, deliver, transfer, impart, provide, publish, convey, or otherwise make available;

- (iii) the term "authorized access" means having authority, right, or permission to receive information or material within the scope of authorized intelligence activities or pursuant to the provisions of a statute, Executive order, directive of the head of any department or agency who is empowered to classify information, order of any United States court, or provisions of any Rule of the House of Representatives or resolution of the Senate which governs handling of classified information by the respective House of Congress.
- (c) Nothing in this section shall be construed to establish criminal liability for disclosure of classified information in accordance with applicable law to:
 - (i) any court of the United States, or judge or justice thereof; or
 - (ii) the Senate or House of Representatives, or any committee, subcommittee or joint committee thereof."

SEC. 2. The table of contents of Chapter 37 of title 18, United States Code, is amended to include the following caption:

"791. Unauthorized Disclosures".

SECTION BY SECTION EXPLANATION

Section 1 of the Bill amends chapter 37 of title 18, United States Code, to include a section 791 prohibiting certain unauthorized disclosures of classified information. Section 2 of the Bill makes the corresponding changes in the table of contents for chapter 37 of title 18.

Proposed section 791 of title 18, United States Code, provides criminal penalties for willful unauthorized disclosures of classified information by federal employees and others who have authorized access to classified information, such as government contractors. With the narrow exceptions of unauthorized disclosures of atomic energy Restricted Data, communications intelligence/cryptography information, and the identities of covert agents, willful unauthorized disclosures of classified information by those entrusted with it by the government are not per se offenses under existing federal criminal statutes.

Subsection (a) of § 791 prohibits willful disclosure or attempted disclosure of classified information, by a federal civilian or military officer or employee or other person with authorized access to such information, to any person who is neither a federal civilian or military officer or employee nor a person with authorized access to such information. The subsection provides criminal penalties of not more than three years imprisonment or a \$10,000 fine, or both, for such willful unauthorized disclosure of classified information.

Subsection (b) of § 791 prohibits willful disclosure of classified information by a federal civilian or military officer or employee to another such officer or employee with the intent that the latter disclose the information, directly or indirectly such as through a chain of intermediaries, to a person who is neither a federal civilian or military officer or employee nor a person with authorized access to the classified information. The criminal penalties for such an offense are identical to those provided for the offense defined in subsection (a).

Subsection (c) of § 791 defines key terms employed in subsections (a) and (b) in defining the offenses of willful unauthorized disclosure. Paragraph (i) defines "classified information" to consist of information or material designated as requiring protection against unauthorized disclosure for reasons of national security pursuant to a statute or Executive order. Paragraph (ii) defines the term "disclose" or "discloses" to include all forms of disclosure enumerated in the existing provisions of 18 U.S.C. §§ 793-798 and 50 U.S.C. § 426. Paragraph (iii) defines the term "authorized access" to include authority or permission to receive information within the scope of authorized intelligence activities or pursuant to the rout

branch, orders of the courts of the United States, or rules of either House of Congress. Authorized intelligence activities are those conducted pursuant to statute or Executive order, such as the current Executive Order 12333 governing United States intelligence activities.

Subsection (d) of § 791 assures that no criminal liability will attach under subsections (a) or (b) to otherwise lawful disclosure of classified information to the Congress or the courts.